

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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LEWIS RICHARD ANDERSON,

Civil No. 08-1257 (RHK/AJB)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

WARDEN HOLINKA,

Respondent.

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Petitioner commenced this action by filing an application for habeas corpus relief under 28 U.S.C. § 2254. The matter has been referred to this Court for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this action be dismissed without prejudice.

On May 7, 2008, Petitioner filed a habeas corpus petition seeking relief from a state criminal conviction that purportedly occurred in 2002 in Ramsey County, Minnesota. The Court reviewed the petition shortly after it was filed, and found it to be defective in several respects. In an order dated May 14, 2008, (Docket No. 2), the Court advised Petitioner of the defects that were found in his petition, and directed him to file an amended petition within twenty days. Petitioner was further advised that he would have to pay the \$5.00 filing fee for this case, or else apply for leave to proceed in forma pauperis, ("IFP"). The Court's prior order expressly informed Petitioner that if he did not file an amended petition, and satisfy the filing fee requirement, in a timely manner, he would be deemed to have abandoned this action, and it would be recommended that the action be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

The deadline for complying with the Court's prior order in this matter has now expired, and Petitioner has not filed an amended petition, nor has he taken any action to resolve the filing fee requirement. In fact, Petitioner has not communicated with the Court on this matter at all since he filed his original habeas corpus petition. Therefore, it is now recommended, in accordance with the Court's prior order in this matter, that Petitioner be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, No. 07-1426 (8<sup>th</sup> Cir. 2008), 2008 WL 540172 (unpublished opinion) at \* 1 ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order."). See also Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

#### RECOMMENDATION

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: June 6, 2008

s/ Arthur J. Boylan  
ARTHUR J. BOYLAN  
United States Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before June 20, 2008.